Received: 26 August 2020 | Accepted: 28 February 2021

DOI: 10.1002/pa.2669

ACADEMIC PAPER

WILEY

COVID-19 and the legislative response in India: The need for a comprehensive health care law

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The outbreak of the SARS CoV2 virus, commonly referred to as the COVID-19 pandemic, has impacted the social, economic, political, and cultural lives of citizens around the world. The sudden outbreak of the pandemic has exposed the legal preparedness, or lack thereof, of governments to reduce and contain its drastic impact. Strong legislative measures play a crucial role in any epidemic or pandemic situation. In this situation, the Indian Government has requested all state governments to invoke the Epidemic Disease Act (EDA) of 1897 to address the COVID-19 emergency. The Central Government has also used the powers provided in the Disaster Management Act (DMA) of 2005. As the country is facing its first major health emergency since independence, the existing legislative measures to deal with a COVID-19 like situation are lacking and require certain amendments to address such situations in the future. This paper aims to present the current constitutional and legislative response to health emergencies in India and attempts to identify gray areas in the statutory provisions. Based on the analysis, this paper suggests several recommendations for amending current legislation and suggests the promulgation of comprehensive public health law. This paper is largely based on primary sources such as the EDA and the DMA, regulations, guidelines, rules issued by the public authorities and court cases related to health and health emergencies along with secondary resources such as newspaper articles and published papers.

KEYWORDS
COVID-19, epidemic, health care law, health emergency, legislative response, pandemic, WHO

1 | INTRODUCTION

A new coronavirus that causes acute respiratory disease in humans was identified in Wuhan City, Hubei Province of China (WHO, 2020a) in late 2019 and is most commonly referred to as COVID-19. Coronaviruses are a large family of viruses that cause respiratory infections ranging from the common cold to severe diseases like the 2003 Severe Acute Respiratory Syndrome (SARS) outbreak and the 2011 Middle East Respiratory Syndrome (MERS) outbreak. The Novel Coronavirus (2019—NCoV), the cause of the current outbreak, is the seventh identified member of the family of coronaviruses that infect humans (Zhu et al., 2020). The outbreak in China has now spread across the globe and was officially declared a pandemic by the WHO on March 11, 2020. As of June 4, 2020, there are more than 10 million confirmed cases and 520,000 fatalities globally and over 640,000 confirmed cases and 18,000 deaths in India (WHO, 2020b).

There are numerous hotspots throughout the country, predominantly in urban areas. While the Government has now sealed the areas in these hotspots, the nation also implemented a 21-day lockdown as a measure to curb the spread of the virus by breaking its chain on March 25, 2020, which was extended until May 3, 2020 by the Narendra Modi Government. As the virus is highly contagious, many countries have implemented similar lockdowns in an attempt to control the spread of the virus as there is currently no vaccination or

approved treatment. India also completely closed all kinds of transportation. The COVID-19 pandemic is a global medical emergency and requires immediate and stringent action by the Government to control human loss. Apart from medical preparedness, legal provisions play a significant role in managing and controlling the disease. It is against this background that this paper focuses on identifying the present constitutional and statutory provisions in India that are available to face a health emergency like the COVID-19 pandemic and identify possible areas for strengthening the legislative structure to face health emergencies in the future. This paper also stresses the need for comprehensive public health law for effective prevention, control, and management of pandemics. Largely, this paper is based on primary sources like laws, statutes, regulations, notices, and court cases related to health and health emergencies in the country. Various acts and laws that are included in this research are the Epidemic Disease Act, 1897 (EDA), the Disaster Management Act, 2005 (DMA) along with bills introduced in parliament and which have lapsed like the National Health Bill (2009) and the Public Health (Prevention, Control, and Management of epidemics, bio-terrorism, and disasters) Bill, 2017 along with regulations, notices, and guidelines issued during the COVID-19 crisis by the Central Government along with state governments. The paper also concentrates on recently published articles from journals and newspapers at the national and international levels.

2 | INDIAN CONSTITUTIONAL AND LEGAL FRAMEWORK RELATED TO HEALTH EMERGENCIES

The Indian Constitution is the longest constitution in the world including a preamble and 448 articles. The Constitution is divided into 12 schedules and 22 parts. India is declared as a "sovereign, socialist, secular, democratic republic" and secures all its citizens "justice, liberty, equality, and fraternity." Considering these broader principles, legislations are drafted, discussed, and passed in Parliament and state legislatures, and executed. In this context, it is a basic responsibility of the state to protect the lives of its citizens in unforeseen situations and calamities. From this point forward, this paper is divided into two sections. The first section concentrates on the health-related provisions mentioned in the Indian Constitution with the second section providing an analysis of various legislations which the Indian Government has evoked during this pandemic, including the EDA and the DMA.

2.1 | Health-related constitutional provisions

The constitutional and legal framework of the management of epidemics and health emergencies has been at the forefront of discussions and debates throughout and outside of the nation since the nationwide lockdown order. The Indian Constitution ensures the Right to Health for all without any discrimination (Kumar, 2015; Mathiharan, 2003). Article 21 in the Indian Constitution states explicitly the citizen's fundamental right to life and personal liberty, which can be argued was violated as the country enacted a complete nationwide lockdown. Provisions related to health are mentioned in Part IV of the Constitution in terms of the Directive Principles of State Policy. Article 39(a) mentions the responsibility of the State to provide security to citizens by ensuring the Right to adequate means of Livelihood. Article 39(e) mentions the State's responsibility to ensure that "health and strength of workers, men, and women and the tender age of children are not abused." Article 41 imposes a duty on the State to "provide public assistance in cases of unemployment, old age, sickness, and disablement." Article 42 makes provision to "protect the health of the infant and mother by maternity benefit." Article 47 is about "raising the level of nutrition and the standard of living of people and improving public health."

India is a union of 28 states and 8 Union Territories. There is a constitutional distinction between the working rights and responsibilities of the government bodies of the central government and the states and territories. The seventh schedule under Article 246 of the Indian Constitution deals with the division of powers between the Union and the States, and legislation can be made, respectively. The Seventh Schedule contains three lists: the Union List, the State List, and the Concurrent List. The Parliament can make laws on 97 items that are mentioned in the Union List, whereas the state legislatures can make laws related to the 62 items in the State List. The Concurrent List, on the other hand, has subjects over which both Parliament and state legislatures have jurisdiction on 52 items. However, the Constitution gives federal supremacy to Parliament on the Concurrent List items in case of a conflict. Both the Central Government and the states are empowered to make laws related to public health. Items related to public health are mentioned in all three lists of the Indian Constitution. Quarantine, including all issues related to seamen's and marine hospitals and medical institutions, are mentioned in numbers 28 and 81 of the Union List. The states can make legislation related to "health care, sanitation, hospitals, dispensaries, and prevention of animal diseases" under item six of the State List. The Union and states can make laws related to the health profession and the prevention of the extension from one state to another of infectious or contagious diseases or pests affecting people, animals, or plants under entries 26 and 29 of the Concurrent List. The High-Level Group (HLG), formed for the health sector by the 15th Finance Commission, recommended moving health subjects to the Concurrent List (Narayanan, 2019). It also recommended mentioning the "Right to Health" as the fundamental right.

The Right to Health is not explicitly mentioned in the Indian Constitution as is the Right to Education, but various judgments—Consumer Education and Resource Centre versus Union of India (1995), State of Punjab and others versus Mohinder Singh Chawala (1997) and Paschim Banga Khet Mazdoor Samity versus State of West Bengal (1996) included the Right to Health as part of Article 21 of the Indian Constitution (i.e., Right to Life, and the Government has a constitutional obligation to provide health facilities to citizens) (Mathiharan, 2003). Hence, the role of government at all three levels—Union, State, and local (panchayats and municipalities) level is

crucial in providing health care to all citizens. However, "health emergency" is not part of the emergency provisions of the Indian Constitution. The Indian Constitution empowers the President of India to declare three kinds of emergencies: national emergency, state emergency, and financial emergency. A national emergency is imposed if the security of the country is threatened on the grounds of war, external aggression, or armed rebellion. A state emergency is imposed if there is a constitutional breakdown in the respective state. A financial emergency is imposed if the financial stability of the country is threatened. As imposing a lockdown or keeping strict measures to contain the spread of disease will impact citizens' fundamental rights, there is a need to explore various constitutional methods to include health emergencies in the emergency provisions with proper consultations with various stakeholders.

2.2 | Existing laws for facing health emergencies in India

2.2.1 | The Epidemic Diseases Act, 1897 (EDA)

The EDA, which was enacted during the British colonial era, was promulgated to tackle the bubonic plague which broke out in the Bombay State (now Maharastra State). The Act is 125 years old, with only four sections. The law is described as "extraordinary" but "necessary" by John Woodburn, the Council Member of the Governor-General of India in Calcutta during the discussion on the bill introduced in 1897 and emphasized that people must "trust the discretion of the executive in the grave and critical circumstances" (Rai, 2020). Hence, any action taken on the grounds of epidemics must take into consideration all grave and critical circumstances. Such decisions may not be opposed by the general public for the "greater good" for all. The law was vital in containing other outbreaks in the country like Cholera (1910), Spanish Flu (1918–20), Smallpox (1974), Swine flu (2014), and the Nipah Virus (2018). The EDA is the only act that provides legal interventions in the case of a national or sub-national epidemic (Patro et al., 2013). The first section gives the title and the extent of the implementation of the act. The second section deals with the power to take special measures and prescribe regulations during times of dangerous diseases by the central and state governments. Under section 2 of the act, the state government may take or empower any person to issue notices or regulations to be observed by people during the outbreak. Section 2A empowers the Central Government to take precautions and issue regulations for the inspection of ships and vessels and also to regulate any person who intends to sail. Penalties are included in the third section, and the fourth section covers the protection of persons acting under the act. The disobedience to the directions of public servants under the act is considered an offense and punishable under section 188 of the Indian Penal Code 45 of 1860 (i.e., imprisonment of 6 months and/or a fine of 1000 rupees).

On April 22, 2020, using the powers under Article 123, the Modi Cabinet issued an ordinance to amend the EDA, as there had been incidents of attacks on health care workers. The ordinance amended section 3 of the EDA. If anyone causes damage or loss to the property, then they may be punished with "imprisonment for a term of 3 months to 5 years and with a fine of Rs. 50,000/- to Rs. 200,000/-." In case of violence and physical attack on health care workers, they can be imprisoned "for a term of 6 months to 7 years and with a fine of Rs. 100,000/- to Rs. 500,000/." In addition, "the offender shall also be liable to pay compensation to the victim and twice the fair market value for damage of property."

The Ministry of Health and Family Welfare (MoHFW, 2020), which is a nodal agency for issuing guidelines and bulletins to other ministries in the Central Government and state governments, is actively involved in directing and advising the states on COVID-19. Since COVID-19, the Secretary of MoHFW has been holding regular press briefings to disseminate information. The state/UT governments under section 2 of the act are issuing regulations and notifications related to measures to be taken for containing the spread of COVID-19. The following part of this section concentrates on state-level legislative measures.

The Odisha State government has brought in another ordinance, which provides that any person violating the epidemic regulation shall be imprisoned for a period of 2 years and given a fine of Rs. 10,000 (The Economic Times, 2020). This, therefore, replaces section 3 of the main act, which provides only for imprisonment to a maximum of 6 months and a fine of Rs. 1000. The ordinance is normally issued by the elected executive when the State Assembly is not in session. Hence, the state governments had implemented the Odisha COVID-19 Regulations, 2020, using the main act.

Telangana, a south Indian State, invoked the EDA by issuing a regulation called "the Telangana Epidemic Disease (COVID-19) Regulation 2020" (PRS India, 2020a). The regulation empowers the Director of Public Health (DPH), the Director of Medical Education, all the District collectors, Commissioner of Police, District Superintendent of Police, and all Municipal Commissioners of Corporations in the State to take measures to control and contain COVID-19. The regulation brings all hospitals, both public and private, under the purview of the regulations and directs them to report all cases to the State Integrated Surveillance Units and Collector of the District or the Commissioner of Corporations. The empowered officials can take action on persons who refuse to comply with the regulation under Section 188 of the Indian Penal Code. The regulation also prohibits the spread of misinformation on social media and in print media, and necessary action may be taken on violators. Hence, the State Government of Telangana emphasized keeping the institutional structures strong and powerful to contain COVID-19.

Another south Indian State promulgated the Karnataka Epidemic Diseases, COVID-19 Regulations, 2020, using the powers under the EDA (PRS India, 2020b). The regulations bar private laboratories from conducting COVID-19 testing. All samples must be collected by the designated laboratory by the District Nodal Officer of the Department of Health and Family Welfare of the concerned district. The samples are collected according to guidelines issued by the Central Government. The interesting point of the regulation is that it makes the District Disaster Management Committee headed by the Deputy

Commissioner the main authority for preparing strategies regarding containment measures at the district level. Similarly, many state governments have issued regulations according to their institutional setup and strategized their plans to counter COVID-19.

Prior to the COVID-19 pandemic, some state governments had their own public health acts or had amended the EDA to include certain provisions at the state level. The Madras Public Health Act, 1939 in the State of Tamil Nadu, is one example of comprehensive public health law at the state level. The act includes a Public Health Board being constituted at the state level that includes a Minister of Public Health, other coordination ministers, the surgeon general, Director of Health Services, Sanitary Engineer and other members nominated by the state government. The Board's role is to advise the state government. The act also includes prevention, notification, and treatment of diseases. There is a similar act in the State of Madhya Pradesh, namely the Madhya Pradesh Public Health Act, 1949. In the State of Kerala, the Travancore-Cochin Public Health Act, 1955 and the Malabar Public Health Act, 1939 are both in place in the case of any major public health issue. The Madhya Pradesh State Government is planning to combine both acts and bring them into a single act for covering the entire state. Compulsory provision of vaccinations is included by the state government of Himachal Pradesh under the Himachal Pradesh Vaccination Act, 1968. Bihar gave the state governments the power to make requests for vehicles during epidemics (Rakesh, 2006).

The EDA is not comprehensive and left to state governments to devise their own public health laws. However, only some state governments like Madhya Pradesh and Bihar have their own laws related to public health. Though the EDA has been invoked during the COVID-19 pandemic by various state governments after directions from the Central Government, there is a need for an integrated, comprehensive, actionable, and relevant legal provision for the control of outbreaks in India (Rakesh, 2006). The EDA in the present form is not sufficient to face health emergencies like COVID-19 as it is silent on technical and operational mechanisms of the control and management of epidemics.

2.2.2 | Disaster Management Act, 2005

It was the Disaster Management Act under which the nationwide lockdown of 21 days was declared on March 25, 2020 by the Modi Government and was then extended until May 31, 2020. The DMA was enacted in 2005 with the objective "to provide for the effective management of disasters and for matters connected therewith or incidental there to." The act consists of 79 sections and covers a wide range of issues like the establishment of the National Disaster Management Authority (NDMA), State Disaster Management Authority (SDMA), District Disaster Management Authority (DDMA), measures to be taken by the Governments during the disaster, penalties, and offenses of the violators. The NDMA was established under the act, and the Prime Minister is the ex-officio Chairperson along with nine other members. Subsequently, a guideline on the Management of Biological Disaster 2008 was passed and currently the NDMA deals extensively with biological disasters and health emergencies.

There are certain sections in the NDMA that helped the Central Government to impose the lockdown and restrict all kinds of transportation in the country. Section 62 of the DMA gives powers to the Central Government to issue directions to all ministries or departments of the Government of India and state/UT governments. On 11 April 2020, the Central Government invoked section 69 of the DMA, which delegated the powers of the Home Secretary to the Secretary, Ministry of Health and Family Welfare for coordinating various activities among ministries and states/UTs. Unlike the other laws, this act "provides for an exhaustive administration set up for disaster preparedness." Violators are punishable up to 1 year in jail or a fine or both under Sections 51 to 60 of the Act. The law describes the offense as obstructing any officer or employee from performing their duty or refusing to comply with directions (RSTV Bureau, 2020). For the better execution of the national lockdown, numerous states likewise summoned section 144 of the Criminal Procedure Code (CPC).

One of the major issues with the DMA is whether epidemic or pandemic can be considered "disaster" as per its definition. Section 2 (d) of the DMA States that: "Disaster means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or man-made causes, or by accident or negligence which results in substantial loss of life or human suffering or damage to, and destruction of, property, or damage to, or degradation of, environment, and is of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area." One can interpret that a health emergency of the kind created by the COVID-19 pandemic falls under "grave concerns," but such interpretation will not serve any purpose in effectively managing the epidemic. There are intricacies and technicalities associated with the health emergency that is not covered by this legislation.

2.2.3 | Other legislative provisions

Terms like "quarantinable disease" and "isolation," have been defined under the Indian Aircraft (Public Health) Rules, 1954 as "yellow fever, plague, cholera, smallpox, typhus, and relapsing fever" and "when applied to a person or group of persons means the separation of that person or group of persons from other persons, except the health staff on duty, in such a manner as to prevent the spread of infection." respectively. Along with these, it provides definitions of various other words such as "Health Officer," "Infected Aircraft," "Infected Area," "Infected Person." Similar restrictions are found under the Indian Port Health Rules, 1955, framed under the Indian Port Act, 1908, for the quarantining and isolation of passenger ships, cargo ships, and cruise ships. It further provides for the provision, which states that the Central Government has the power of inspection of any ship or vessel leaving or arriving at the port at any point of time which comes under its jurisdiction. Similarly, the provisions in the Livestock Importation Act, 1898, cover the issue of quarantine of animals to protect and maintain their good health. Where the word "Quarantine" means "to separate and restrict the movement of healthy animals which may have been exposed to a communicable disease to see if they become

ill" while the word "Isolation" means "to separate the ill having communicable disease from those who are healthy." Later, under the same act, Animal Quarantine and Certification Service Station was created for the same purpose. While the Drugs and Cosmetics Act, 1940 provides provisions related to public health on the grounds of availability of and distribution of vaccines and drugs during an outbreak of dangerous and infectious disease.

A Public Health Bill was introduced in 2009, but it was not passed because many states objected to it as health is a subject under the State List. The bill was extensively drafted and mandated health as a right and also recommended the establishment of a National Public Health Board. The bill also advocated for the convergence of various national, state, district, block, and village level planning and implementation authorities. The redressal and communication mechanisms were also clearly mentioned in the bill. The bill was introduced during the United Progressive Alliance (UPA)—II regime under Manmohan Singh as Prime Minister. Subsequently, in 2017, during the Modi government's first term, the Public Health (Prevention, Control, and Management of Epidemics, Bio-fear based oppression, and Disasters) Bill 2017 was introduced, but the bill ultimately faced the same fate as the previous bill. The 2017 bill clearly defines epidemics, isolation, quarantine, public health emergency, and social distancing. Section 3 of the bill gives powers to state/UT, district, and local authorities, whereas section 4 of the bill defines powers of the Central Government in giving directions. Penalties are also high when compared to other acts and bills. Section 14 (1) of the bill repeals the EDA.

2.3 | COVID-19 health emergency: Union response and federal concerns

For the first time since independence, India is facing a major health emergency in the form of the COVID-19 pandemic. The decision to impose a nationwide lockdown by the Central Government using the powers under Section 6(2)(i) of the DMA has raised certain questions by legal experts (Daniyal, 2020). The notification issued by the Secretary, Ministry of Home (MoH) to all the state governments on March 24, 2020, asked all state and UT governments to send daily reports on how they are implementing the lockdown. Since then, the MoHFW has been issuing guidelines on various precautionary measures to be taken by all state/UT governments. However, there is opposition to the constitutional and legal validity of issuing lockdown orders under the DMA. The opposition to the implementation of the lockdown by the Central Government is based on two grounds. First, the imposition of the lockdown of all activities in the states and directed the district magistrates, who otherwise take orders from state governments, to implement the lockdown during the COVID-19 outbreak is against the spirit of the Constitution as both public order, and health and sanitation come under the State List. The Central Government has formed the Inter-Ministerial Central Teams (IMCT) under Section 10(2) of the DMA to conduct field visits in all states and UTs instead of forming an Inter-State Council under Article 263 of the Indian Constitution (Owaisi, 2020). Secondly, there is a lack of fiscal and monetary help from the Central Government to the state/UT governments during this lockdown period. During this pandemic, the Central Government has taken the decision to control COVID-19 and is largely dependent on existing legal tools like the EDA and the DMA. Safety and protection of lives is the prime goal of imposing a lockdown, and it was the only option for the country in attempting to control the virus as there is currently no vaccination. Narendra Modi, has been organizing video conferences with the chief ministers of respective state/UT governments along with other functionaries in the governments and taking their concerns and suggestions (Kumar, 2020). The decision to impose and then extend the lockdown three times was taken by the Central Government after consultation with the chief ministers. Regarding the fiscal and monetary help to federal units, the Central Government has initiated fiscal stimulus plans such as the Pradhan Mantri Garib Kalyan Yojana. Though the stimulus package is less than 1% of the GDP, there is space to do much more in the post-lockdown period (Dhar, 2020). The Central Government has to concentrate on strengthening the constitutional and legal provisions to face a future health emergency, keeping the basic structure of the Constitution intact.

There is a pertinent need to strengthen local authorities to deal with and address a pandemic situation with respect to testing, contact tracing, isolation wards, availability of personal protective equipment (PPE), and availability of data at the village level. There is a need for further financial transfers to local bodies more than ever in this situation. Finally, there is a lack of grievance redressal mechanisms in this act. It is vital that the citizens of this nation, when facing such unprecedented and challenging times, are provided with a framework to address their grievances at different levels.

2.4 | Suggestions for strengthening laws related to health emergencies

Three suggestions emerge from this analysis to strengthen India's constitutional and legal mechanisms for facing COVID-19 and similar future scenarios after our review of various acts and constitutional provisions. Firstly, there is a serious need to review the colonial era EDA. Secondly, the passing of comprehensive public health law covering various aspects of health, which provides the right to health to all citizens is needed. Lastly, there is a need to explore various options to include health emergency provisions in the Indian Constitution.

2.4.1 | Amendments to Epidemic Diseases Act, 1897

The EDA is deficient on the following grounds. (1) The act fails to define and categorize various kinds of diseases and the level of severity. (2) The act does not address the containment process and demarcation of zones based on severity levels; it simply prescribes the state's role to restrict the movement of the individual. (3) The act does not mention the role of Panchayats and other local governments.

(4) The act fails to mention the regulations of drugs and vaccines during an epidemic. (5) The act emphasizes controlling the spread of disease by ship, but there is no mention of air travel. Given modern realities, in which air travel far exceeds travel by ship, there is an urgent need for the provision of stricter screening measures needing to be taken at the airport and by airlines. To strengthen the act, the following amendments are required:

1. The amendments related to identifying, testing, isolating, contact tracing, controlling, coordinating, and containing any epidemic are needed to make the EDA comprehensive to tackle any future health emergency.
2. Changes related to the insertion of the definition and categorization of various diseases and demarcation of areas based on severity levels are needed.
3. There is a serious need to clearly state the role of the Union for enhanced coordination with various state and local governments.
4. The establishment of quarantine facilities inside or near airports should be explored and included in the act.
5. Identification of the quarantine locations, which are geographically and scientifically advantageous to contain the pandemic, should be explored. These should be located in remote locations where there are naturally fewer inflows and outflows of people.

2.4.2 | Need for comprehensive national public health law

The second suggestion is for the promulgation of a comprehensive national public health law. Though there have been attempts to establish a public health law—the Model Health Bill in 1955, updated in 1987, the National Health Bill in 2009, and the Public Health (Prevention, Control, and Management of epidemics, bio-terrorism, and disasters) Bill 2017, these were not passed. In each of these cases, there was opposition from states, as health comes under state oversight. As discussed, States like Tamil Nadu and Madhya Pradesh have their own public health laws. There is a need to review various laws at the sub-national level and also in different countries to strengthen India's public health law. In Canada, the Public Health Agency of Canada Act in 2006 provides public health measures and emergency preparedness and response (Ahamed, 2015). At the federal level, the Public Health Agency of Canada (PHAC) is primarily responsible for "the promotion of health, prevention and control of chronic diseases, prevention and control of infectious diseases, and preparation and response to public health emergencies" (PHAC, 2020). The Public Emergency Act and the Quarantine Act also empower federal units in Canada. In Australia, the National Health Security Act, 2007, establishes "structures and processes for preventing and responding to national health emergencies" in the country (Buchanan, 2015). England passed the Public Health (Control of Disease) Act of 1984, which protects the health of the public through a system of surveillance and action (Griffith, 2020). Closer to India, Singapore passed the Infectious Diseases Act (IDA) in 1976 and strengthened it during the global SARS epidemic in 2003 (Neo & Darius, 2020). Recently, Singapore also responded quickly and passed a temporary law—the COVID-19 (Temporary Measures) Act 2020 (CTMA). Recently, the United States of America (USA) passed the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, to fund research and development of vaccines, as well as therapeutics and diagnostics (Oum et al., 2020).

A comprehensive national public health law must take into consideration practicable provisions in various countries' legislative responses to a health emergency and try to strengthen India's public health law while keeping social, political, economic, cultural, and environmental factors in mind. The role of the Union is crucial in creating an environment for a comprehensive public health law by reviewing and addressing the concerns of the states.

The comprehensive public health law should include the following provisions to ensure health care to citizens:

1. The role of the Union, state, and local governments—panchayats and municipalities should be clearly defined without creating any conflicts.
2. The Right to Health should be explicitly mentioned in the Indian Constitution through this act and include provisions for strengthening the medical infrastructure.
3. An institutional mechanism that is able to establish a network with governments, research institutions, and health care providers should be included.
4. The act should clearly state various processes and mechanisms for tracing testing and treatment for controlling the epidemics through appropriate and timely interventions at national, state, and local levels.
5. Fiscal and momentary relief for states and local bodies during medical emergencies should be included.
6. Special protection should be given to health care and sanitation workers keeping in mind the social dynamics of society.

2.4.3 | Heath emergency provisions in the Indian Constitution

As discussed, there are no health emergency provisions in the Indian Constitution. Recently, after the declaration of the pandemic, France enacted the Emergency Response to the COVID-19 Epidemic Act (2020290), in a speedy procedure on March 23, 2020, to contain and control the epidemic. According to the new Act. L3131-12 CSP, of the French Constitution, states, "the State of health emergency can be declared (…) in the event of a health disaster endangering, by its nature and gravity, the health of the population" (Platon, 2020). Japan also invoked a health emergency provision on April 7, 2020 by revising the New Influenza Special Measures Act. Article 352 of the Indian Constitution empowers the President to impose an emergency "whereby the security of India or any part thereof is threatened whether by war or external aggression or armed rebellion."

However, a health emergency is not grounds for imposing a national emergency and restricting the movement of people. India should explore various options for inserting a health emergency provision into the Indian Constitution. There is a need to discuss widely inside and outside of the Parliament as emergency provisions impact the fundamental rights of citizens. There is opposition from pockets of society that lockdown is unconstitutional and there has been criticism of the excessive role of the Central Government in imposing the lockdown (Owaisi, 2020). On the other hand, there are Public Interest Petitions (PILs) filed in the Supreme Court to impose a financial emergency under Article 360 of the Indian Constitution (Kannan, 2020). Clarity on the lockdown which restricts the movement of people will impact the fundamental rights enshrined under Article 19 (1)(d) to free movement throughout the territory of India and 19 (1)(e) to reside and settle in any part of the territory of India. Additional opposition to the lockdown order comes from the excessive role of the Central Government in imposing lockdown by declaring the health emergency as a subject of federal units. As COVID-19 is highly contagious, virulent, and has no boundaries, the coordinated efforts of the union, state, and local governments are crucial in handling this pandemic. With a diverse population and opinions, imposing lockdown will certainly have implications on controlling the pandemic. What one should realize is the right to life, and personal liberty is more important than the freedom of expression during a pandemic situation.

2.5 | Conclusion

The COVID-19 pandemic has led to questions about many aspects in India—the quality of health care, the response of governments and institutions, and issues related to law and order. The constitutional and legislative framework should help in addressing these questions. The Indian Government effectively imposed the lockdown and reduced the number of cases, while at the same time certain lawmakers and legal experts questioned the constitutional legality of the lockdown and the response of the Government. Though the Central Government has implemented the EDA and the DMA, these are not sufficient to face the health emergency effectively given the dynamic nature of the disease. This paper has explored various options for bridging the gap and strengthening the constitutional and legal framework for addressing any future health emergency. These emergencies will give ample space to fill the lacuna in the legal framework, and allow our future generations to be better prepared for any type of health emergency.

DATA AVAILABILITY STATEMENT

The data that support the findings of this study are available in the World Health Organization (WHO) at https://covid19.who.int/ (WHO, 2020a; WHO, 2020b). These data were derived from the following resources available in the public domain: https://www.who.int/news-room/detail/27-04-2020-who-timeline–covid-19%20, https://covid19.who.int/

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REFERENCES

Ahamed, T. (2015). Canada: Legal responses to health emergencies. Library of Congress. February. Retrieved May 15, 2020 from https://www.loc.gov/law/help/health-emergencies/canada.php.

Buchanan, K. (2015, February). Australia: Legal responses to health emergencies. Library of Congress. Retrived May 19, 2020 from https://www.loc.gov/law/help/health-emergencies/australia.php.

Daniyal, S. (2020, March 26). Can the center bypass the States and declare a lockdown. Scroll. Retrieved May 2, 2020 from https://scroll.in/article/957239/can-the-Union-government-bypass-the-States-and-declare-a-lockdown.

Dhar, B. (2020, April 9). Covid-19: Govt's fiscal package is underwhelmingCovid-19: Govt's fiscal package is underwhelming. Business Line. Retrieved May 20, 2020 from https://www.thehindubusinessline.com/opinion/COVID-19-india-must-ramp-up-economic-support-measures/article31297536.ece.

Griffith, R. (2020). Using public health law to contain the spread of COVID-19. *British Journal of Nursing*, *29*(5), 326–327. https://doi.org/10.12968/bjon.2020.29.5.326

Kannan, B. (2020, April 6). Coronavirus And The Constitution, Live Law. Retrieved May 25, 2020 from https://www.livelaw.in/columns/coronavirus-and-the-constitution-v-financial-emergencies-154840.

Kumar, R. P. (2020, Aril 27). PM Modi-CMs Covid-19 meeting: What chief ministers said. Live Mint. Retrieved May 28, 2020 from https://www.livemint.com/news/india/pm-modi-cms-COVID-19-meeting-what-chief-ministers-said-11587972760881.html.

Kumar, R. (2015). Right to health: Challenges and opportunities. *Indian Journal of Community Medicine*, *40*(4), 218–222.

Mathiharan, K. (2003). The fundamental right to health care. *Indian Journal of Medical Ethics*, *11*(4), 123.

MoHFW (Ministry of Health and Family Welfare, Government of India). (2020). Retrieved May 12, 2020 from https://www.mohfw.gov.in/

Narayanan, D. (2019, September 2). Panel seeks 'Right to Health', shift to concurrent list. Economic Times, Retrieved May 2, 2020 from https://economictimes.indiatimes.com/news/politics-and-nation/panel-seeks-right-to-health-shift-to-concurrent-list/articleshow/70951844.cms?from=mdr.

Neo, J., & Darius, L. (2020). Singapore's legislative approach to the COVID-19 public health 'emergency'. Verfassungsblog on Matters constitutional. Retrieved May 19, 2020 from https://verfassungsblog.de/singapores-legislative-approach-to-the-COVID-19-public-health-emergency/.

Oum, S., Wexler, A., & Kates, J.. (2020, March 11). The U.S. response to coronavirus: Summary of the coronavirus preparedness and response supplemental appropriations act, 2020. Global Health Policy. Retrieved May 24, 2020 from https://www.kff.org/global-health-policy/issue-brief/the-u-s-response-to-coronavirus-summary-of-the-coronavirus-preparedness-and-response-supplemental-appropriations-act-2020/.

Owaisi, A. (2020, April 27). Unconstitutional nationwide lockdown. Telangana Today. Retrieved May 20, 2020 from https://telanganatoday.com/unconstitutional-nationwide-lockdown.

Patro, K. B., Tripathy, J. P., & Kashyap, R. (2013). Epidemic diseases act 1897, India: Whether sufficient to address the current challenges? *Journal of Mahatma Gandhi Institute of Medical Sciences*, *18*(2), 109–111.

PHAC (Public Health Agency of Canada). (2020). Mandate. Retrieved May 24, 2020 from http://www.phac-aspc.gc.ca/about_apropos/what-eng.php.

Platon, S. (2020, April 9). From one state of emergency to another – Emergency powers in France, Verfassungsblog on Matters constitutional. Retrieved May 25, 2020 from https://verfassungsblog.de/from-one-State-of-emergency-to-another-emergency-powers-in-france/.

PRS India. (2020a). The Epidemic Disease Act 1897. Retrieved May 14, 2020 from https://prsindia.org/files/COVID-19/notifications/442.TS_The-Epidemic-Disease-Act-1897_21_Mar.pdf.

PRS India. (2020b). Karnataka Notification on COVID-19. Retrieved May 16, 2020 from https://prsindia.org/files/COVID-19/notifications/2828.KA_COVID-19_Regulations_2020_Mar%2011.pdf.

Rai, K. S. (2020, April 2). How the epidemic diseases act of 1897 came to be. The Wire. Retrieved May 4, 2020 from https://thewire.in/history/colonialism-epidemic-diseases-act.

Rakesh, P. S. (2006). The epidemic diseases act of 1897: Public health relevance in the current scenario. *Indian Journal of Medical Ethics*, *1*(3), 156–160.

RSTV Bureau. (2020). Epidemic Act and Disaster Management Act enforced to combat COVID-19. Retrieved May 20, 2020 from https://rstv.nic.in/epidemic-act-disaster-management-act-enforced-combat-covid-19.html.

The Economic Times. (2020, April 9). Armed with ordinance, Odisha now may send epidemic rule violators to jail for 2 yrs. Retrieved May 4, 2020 from https://economictimes.indiatimes.com/news/politics-and-nation/armed-with-ordinance-odisha-now-may-send-epidemic-rule-violators-to-jail-for-2-yrs/articleshow/75065628.cms?from=mdr.

The Himachal Pradesh Vaccination Act. (1968). The Himachal Pradesh Vaccination Act, 1968: Arrangement of Sections. Retrieved June 1, 2020 from https://himachal.nic.in/WriteReadData/l892s/10_l892s/THE%20HIMACHAL%20PRADESH%20VACCINATION%20ACT,%201968-45141844.pdf.

The National Health Bill. (2009). Retrieved April 30 2020 from http://nhsrcindia.org/sites/default/files/The%20National%20Health%20Bill%202009.pdf.

WHO (World Health Organization). (2020a, April 27). WHO Timeline - COVID-19. Retrieved May 15, 2020 from https://www.who.int/news-room/detail/27-04-2020-who-timeline--covid-19.

WHO (World Health Organization). (2020b, May 25). WHO Coronavirus Disease (COVID-19) Dashboard. Retrieved May 25, 2020 from https://covid19.who.int/.

Zhu, N., Zhang, D., Wang, W., Li, X., Yang, B., Song, J., Zhao, X., Huang, B., Shi, W., Lu, R., Niu, P., Zhan, F., Ma, X., Wang, D., Xu, W., Wu, G., Gao, G. F., Tan, W., & China Novel Coronavirus Investigating and Research Team. (2020). A novel coronavirus from patients with pneumonia in China, 2019. *New England Journal of Medicine*, *382*(8), 727–733.

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How to cite this article: Gowd KK, Veerababu D, Reddy VR. COVID-19 and the legislative response in India: The need for a comprehensive health care law. *J Public Affairs*. 2021;e2669. https://doi.org/10.1002/pa.2669